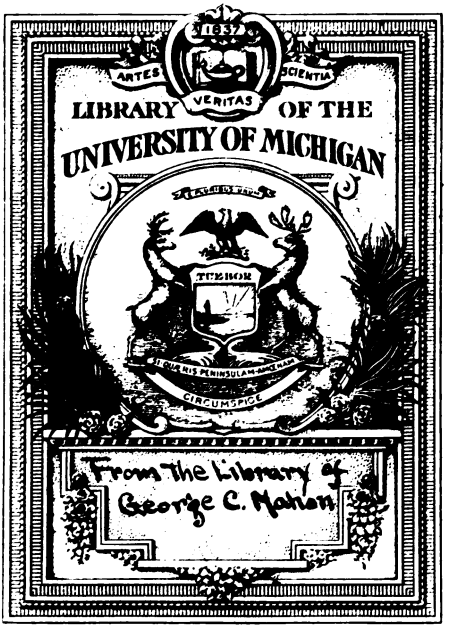
The Story of the Incumbered Estates Court.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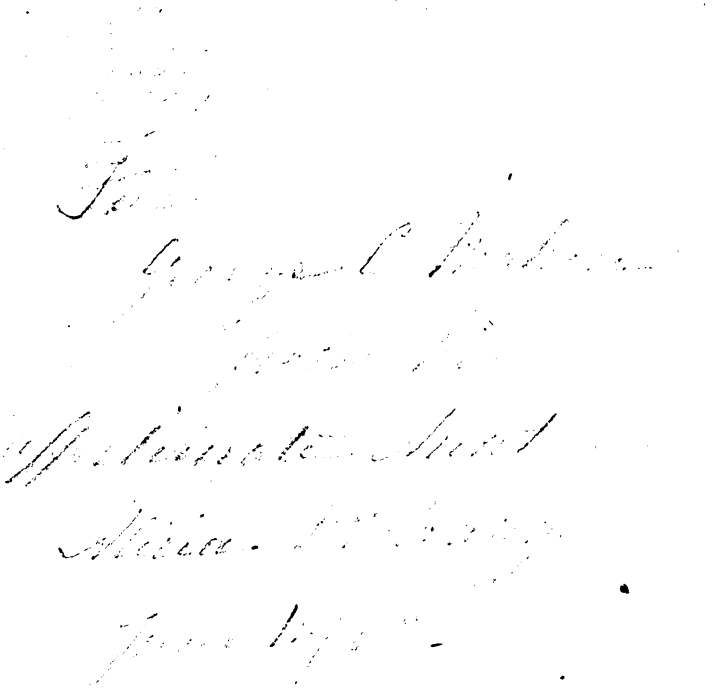

THE STORY

OF THE

INCUMBERED ESTATES COURT.

FROM

"ALL THE YEAR ROUND."

BY

PERCY FITZGERALD, ESQ. M.R.I.A.

"But I am for leaving a quantity of land in commerce to excite industry and keep money in the country."—BOSWELL'S LIFE OF JOHNSON.

LONDON:
SAUNDERS, OTLEY, AND CO.
66, BROOK STREET.
1862.

TO THE RIGHT HONORABLE

JAMES HENRY MONAHAN,

CHIEF JUSTICE OF THE COURT OF COMMON PLEAS
IN IRELAND.

PREFACE.

"There are a hundred faults in this thing," wrote amiable Doctor Goldsmith in his Preface to his famous "Vicar." But he adds presently, by way of corrective, "a book may be amusing with numerous errors." Some such apology, framed on so excellent a precedent, may be offered for the "thing" that is here introduced to the Public.

Errors no doubt there are, possibly a full and substantial crop. But the aim has been to furnish not so much a precise, as a broad and

substantial sketch, tolerably accurate in the main, yet, perhaps, sinning a good deal by way of omission. The original shape too, in which this little Tract appeared, must be all the excuse for the somewhat light and irreverent character of the style in which a grave and even awful subject is dealt with. The wagonnettes of periodical Literature — specially those which run weekly—necessitate airy lines of construction.

I have only to add, that Mr. Dickens has, with his usual kindness, permitted me to reprint such portions of these Sketches as have appeared in his well-known Journal.

STORY

OF THE

INCUMBERED ESTATES COURT.

CHAPTER I.

THE DISEASE.

THE patient lay almost at the last gasp.

This was not surprising, considering that the whole system had been wasting in a sort of pecuniary atrophy; that it had been bled murderously over and over again by the fiscal lancet: that a poor-rate Cantharides blister had been applied on the raw, fresh and fresh; that a rebellious fever was working in its blood, ready to burst out upon the surface in angry pustules; and that a

fierce emigration dysentery was griping its vitals. Taking this hopeful diagnosis into account, I say it was not so very surprising. The ordinary medical Sangrados had done their best—and their worst—had played out their consultations, stethescopic soundings, fees, and other bits of the regular show, and were now gazing with an awful respect at the two emiment metropolitan practitioners—sent for specially—who were standing by the bed. The eminent practitioners—the Sir Parker Peps of the House of Parliament, with a smaller official brother—had seen the desparate nature of the case, and were now turning up their shirt-sleeves for a frightful operation. The patient was that part of the kingdom of Great Britain and Ireland called Ireland; the eminent metropolitan surgeons were no other than the Right Honourable the Lord John Russell, M.P., with the Solicitor-General of the

period; and the perilous operation was the famous Incumbered Estates Act of eighteen hundred and forty-nine.

It was indeed time that something should be done. Under the questionable treatment of famines, seditions, agitations, evictions, arms bills, coercion bills, and suspensions of habeas corpus, the features of an Incumbered estate, always exceptional, acquired a new and very curious interest. Where there were no tenants to pay rents, it would be unreasonable to look for rents; and where poor-rates were at the modest figure of one pound in the pound, it may be assumed that landlords were shy of assuming their real character. Under this general elimination of rents, landlords, and tenants, the situation was distressingly simplified, and to mere unimpassioned spectators presented a field for the strangest speculation.

But there was a class who looked on from afar off, and to whom the question, apart from its theoretic merits, became interesting on more vulgar grounds. These were a strong band of mortgagees, principally base Saxons, representing a charge of some four millions upon a nominal rental of some twelve millions, and whose feelings, on this practical suspension of the relations between landlord and tenant, would not unnaturally be tinged with alarm. Their gratification at so pleasing a phenomenon in political economy, would be mixed with a foolish sense of personal apprehension. Even in the old prosaic times there had been, in most instances, a coldness, an estrangement, between mortgager and mortgagee; and parties had been driven to the pressure of equity suits, languishing through many decades of years, to restore anything like friendly communication.

But, on this new aspect of things, there came a total suspension of all relations between these gentlemen and their friends in Ireland; and there being neither rent to pay, nor moneys to pay rent with, nor tenants to earn moneys to pay rent with, there seemed no probability of the breach being healed. This unavoidable suspension of cash payments—unprovided for by any Act of Parliament or charter—began to excite murmurs both loud and deep. Harpies of the law began to disturb the last agonies of the patient; they clamoured at the gate with an indecent importunity; they threatened, by sheer force of numbers, to bear down the ingenious frustration of equitable proceedings happily interposing between them and their victims; and then, and only then, were the famous metropolitan doctors sent for express.

The incumbrances had to be cut out with the

knife. Looking outside the fearful visitations which had swept the country as with a human murrain, it seemed to be agreed to lay much of the evil at the private entrance of the Court of Chancery. Much vituperation was outpoured upon that conduit-pipe of the law, then much choked, and needing scavengering sadly.

It was plain that this unhappy tribunal was to be the Aunt Sally of the period. The sticks came flying from every quarter. It was Bogie Chancery, and nurses found an appeal to its terrors useful in the treatment of children. Terrible legends went abroad of its doings: How its delight was to send forth a swarm of Burrs known as Receivers, who, when an estate became sick and weakly, proceeded to fix themselves to it inseparably, and drain away its vitals. How a greedy mortgagee, after a three years' arrear of interest or a claim of say ten pounds annually,

might apply for a special insect to be sent down and receive the rents and profits of the whole estates. How the land became overrun with these cruel administrators, who, living in the capital, drained from their provinces huge fees and profits and costs, and suffered heavy arrears to accumulate, and the lands and tenements to run to waste—and who often disappeared, largely in default. We are told how this grew to be a lucrative profession, side by side with a broad comprehensive suit—a rich and luscious professional plum-cake. It was considered the normal condition of all estates. Each was already enjoying, or tending towards this agreeable supervision.

Pleasant little narratives were in circulation, as illustrating the awful wickedness of Bogie Chancery. There was the tenant who, when mildly remonstrated with on his not improving

his holding, pleaded his having had seven masters in succession, all of the rank of Receiver, within as many years; which permutation of ownership naturally entailed an uneasiness of tenure. Then came pleasant personal reminiscences from the lips of the most puissant of lawyers, the writer of the Sugdenian Pandects and Ex-Chancellor of two kingdoms. No doubt, at many a board was narrated that incident of his Irish experience, when a great foreclosure suit was setting in, and legions of barristers sprang up, one after another, each introducing himself as accredited from some party to the suit. Each as he spake flung his brief towards the amazed Chancellor. The mean Saxon mortgagee would foreclose; but, by way of overture to his equity Opera, must give notice to every judgment creditor. Hence this barristerial flux. The Right Honourable Abraham Brewster had the good fortune to be in at the

final close of a little suit, which began so far back as the year seventeen hundred and ten. Other instances came under that gentleman's professional eye, enjoying a promising vitality of fifty, sixty, and seventy years. In the last century the great Lord Mansfield was induced to assume the character of an Irish mortgagee, a step happily resulting in a thriving, healthy suit, which actually survived down to the year eighteen hundred and fifty-three—a fine sexagenarian—when it unhappily met with an untimely demise. An eminent judge, who sat in his Incumbered Estates Olympus, has a little suit in his memory where, to raise a small charge of one thousand pounds, no less than fifty parties had to be "served," for "answering" purposes.

The famous Jarndyce suit was notorious in the Irish equity tribunal, long before it attracted notice across the Channel. That sort of piece

was so familiar to an Hibernian audience, that they almost smiled at the horror of the British public.

Taking it, then, that Irish Jarndyce, anxious to recover his moneys, is inclined to pursue the unworthy device of selling his debtor's estate, it may, perhaps, be interesting to watch his progress as he flounders slowly through the vast equity bog.

There were howls of delight at Rackrent Castle, when this intelligence came down; an exultation shared in yet more largely, by the solicitor to that establishment. There was a "long day," and a certain annuity for a definite period, at last ensured to the estate. For unsuspecting Jarndyce the first plunge was the manufacture of "a bill," a huge, swollen bale of paper flooded with verbiage and profitable circumlocution, containing narratives in the nature of biographies of every single person who might in any shape be connected

with the lands. A sort of ruck of creditors, mortgagees, tenants for life, and every variety of the incumbrancer species, was laboriously introduced. This process often took years, for it required singular pains and diligence to unearth all the parties. An omission discovered at a later stage would be fatal, and entail a new beginning. But at length, all being arranged in beautiful symmetry, and each counsel incumbered with his bale of clean snowy matter, it might be reasonably taken that all was ready. Vain delusion! News has come that some one has died beyond the seas. He must be eliminated from "the bill." In another quarter, twins, of whose coming a little diligence might have given forewarning, have appeared unexpectedly. For all their Twinships they are fresh "parties," and must be added to "the bill."

This awful engine, being duly placed in position, it was only reasonable that fair scope and

opportunity should be given for defence. The Rackrent solicitor now girds up his loins, and in easy, lazy fashion begins garnering evidence and preparing his "answer." This process, laborious, too, must be indulged with a handsome space of years. Finally, all being compact and symmetrical, and the whole facts embodied in the two versions of the case, the huge whale comes labouring into court, towing behind it all the subsidiary minnows. Equity Jove, sitting aloft with a complete version of the case before him, had only to thunder Presto! Order for sale, money paid—causa finita est!

Innocent anticipation! We are barely begun. Counsel, astride on the back of his huge legal monster, addresses a few observations to great Jove aloft, who nods assent, and the labour of months and years, the stalking of "parties," the army of counsel for "parties," and the bales of

snowy briefs, all culminate in the driest and purest of formalities. "Take the ordinary decree," chants Equity Jove, and the minor bewigged divinities bob down into their seats again. It is a happy thought, however, that every one is before the court now,—hitherto invisible to Equity's naked eye.

Invigorated by this encouragement, and after a decent interval, we start afresh, plunging downwards into the Erebus of Masters' offices. Into that grateful arena, Irish Jarndyce takes his whole apparatus of Parties, Notices, bulky paper bales, and wigged spirits, and gets ready for a protracted residence. The case has been referred, and an "account" has to be taken; and through many years, in those dim cells of Equity, still with no unseemly hurry, wigged spirits shall square at each other over hostile figures and discordant vouchers. When at last all things are

made square and taut, and Jarndyce emerges to light and air, a long interval of many months elapses, during which it is understood the "master" is making up his "report." After say a nine months' incubation, it is discovered that a monster white roll has been "laid." So then, gathering up our parties and wigged spirits, the great Jarndyce whale again comes blowing and frothing into court. Every one is furnished with clean new bales, exact copies of what had been "laid" in the equity poultry-yard—shining, dazzling bag furniture. Now we are in port, and a sale is at hand. But here are shoals—breakers, in the shape of "exceptions" to the master's report—an obstructive system of fault-finding; so we must needs back our monster out of court as best we can. By-and-by we shall come again with all our wiggery and fight the battle of exceptions. Finally, we again appear,

and in a single sentence great Equity Jove breathes his soft consent to a sale.

This was that fine old fruity full-bodied Equity, of a rich nutty or knotty flavour, and fully one hundred years in bottle, which was drunk say thirty years ago in Ireland. Nor yet let our English broker hug himself for the purity of his own Chancery liquor. The system was the same with both, only through this load of Irish debt, and facile multiplicity of mortgage, the evil became prominent and more conspicuous.

All this time a receiver was gorging on the rents, costs were accumulating, tenants knowing no certain master were decaying, and when the hour of sale came, only the shells of the estate remained.

With this complication of anthraxes spread over the fair skin of the country, there was no choice but to submit to the operation. The neat-

handed surgeons came. No grander "demonstrator" could have been selected than Sir John Romilly. The invention of this peculiar mode of treatment has been claimed for Lord St. Leonards and for Sir Robert Peel; but the idea was too obvious not to have presented itself to hundreds of unprofessional minds. It only appeared too daring and even Quixotic for practical purposes. However that might be, in the month of April, eighteen hundred and forty-nine, the Solicitor-General took his scalpel in hand, and with one sharp sweeping cut introduced his—bill. And by the twenty-eighth of July of the same year, the operation was successfully performed, and the Incumbered Estates Act became law.*

Not, however, without gloomy desponding and loud and despairing protest. It was piteous to

* An Incumbered Estates Act had been introduced the preceding year; but through some defect proved inoperative.

hear the wail of the Irish peers, forecasting their too certain fate from afar, and pleading for territorial life—the very Girondins of the senate. They had a horrid prescience that they were marked for the earliest victims of this new guillotine. There were some whose estates, sunk beyond redemption in incumbrances, pledged and pledged again for half a million and more, lay helpless in the nets of mortgage, judgments, costs, and receivers. Yet to these noble persons, Chancery had promised an agreeable and almost affluent existence—for their lives at least; after them, the deluge might set in when it pleased. Some years after, when the executioners were weary with their bloody work, one victim, smarting under his wounds, came with frantic cries, and, striking out wildly, told his griefs to his noble friends in the Upper House. It was "the most disgraceful system ever since courts *had been in-*

vented!" It was a nest of "the greatest robbery possible to imagine." It was taken advantage of by "a set of professional schemers" (euphuistic reference to solicitors), who had "myrmidons" up and down the length and breadth of the land. It was not too much to say that the whole "was a system of plunder unexampled." Alack, poor peer!

But on this earlier consultation, when the surgeons were waiting with their instruments, the same victim was raving incoherently of "robbery and confiscation." To him Lord Langdale neatly rejoined, with an affected wonder as to how such harsh terms could fit what was a payment of just debts? A novel and unexpected, and yet at the same time disagreeable way of putting the thing. Complaint, too, was made, that at the final stage an unhandsome advantage was taken of the absence of noble persons at their Irish estates, where they were

busy trampling out the embers of an insurrection then overdue. The present member for Birmingham received it with positive rapture, "a more beautiful explanation he had never heard." But there were ravens abroad of those nights, and raven notes. Mr. Newdegate prophesied gloomy things, and snuffled from afar off "spoliation" and socialism and communism, and, above all, that *morcellement*, or French partition of lands into small parcels, the very quintessence of Jacobinism. Another held out that the scheme would give but a market to speculators and hucksters, and would break down. Another (Sir J. Walshe) said scornfully they might sell and sell, but who would buy? About as absurd, he added, as to put a house actually on fire up to auction.

Still the operators went forward with their work bravely; abundance of evil omen was held

out to encourage them. They would never cauterise as they went along; they would never take up the arteries. The patient would sink under it. But with two millions of persons receiving relief, and a poor-rate that equalled about half the received rental of the country, and a population decreasing at the rate of half a million a year, it was no season for tisanes and water-gruel. The knife was the only remedy.

Behold, it has been done. Draw the curtains. Perfect quiet for the patient; opiates and what not. And here is Mr. Solicitor coming out from the bedroom wiping his fingers on a towel.

Let us call again and see how the patient is getting on.

CHAPTER II.

THE OPERATION.

In this way, then, the court came into the world. It should have been announced officially, in this wise: "On the — ult., at Westminster, the United Parliament of Great Britain and Ireland, of Trins!" for there were to be three judges.

Even out of so dry a function as an official appointment, came something like a snatch of romance. The Master of the Rolls, casting about for the very fittest person, pressed the office on the eminent conveyancer, Mr. Christie, who first hesitated, then declined. "But," said the eminent conveyancer, "I could name a young man, whom nobody yet knows anything about, who is a first-

rate mathematician and a first-rate lawyer, who would be just the person: and who will perform the functions in a manner that you cannot get any other person to do." And to the young man whom nobody knew anything about, plodding laboriously in chambers, toiling at his legal plough, deputies came to offer the crown. Law, then, has its flower-beds and its flowers; and the young man whom nobody knew, left his mortgages and his draughting, to have and to hold prematurely, all that and those the dignity and powers of office, with all the rights, profits, and easements thereunto appertaining.

To this Act, too, should etymologists be grateful. During the earlier debates that first syllable fluctuated uneasily betwixt *En* and *In*. But now the omnipotence of parliament has decreed that *In*cumbered estates shall be sold; but not *En*cumbered Estates.

These high judicial auctioneers set up their rostrum in an old-fashioned red brick street of the last century's pattern, in a collapsed nobleman's house, where the mammoth marble chimney-pieces and the arabesques on the ceiling seemed much out of keeping with its new functions. Nearly opposite, was the mansion of the husband of Marguerite Countess of Blessington, whose ample estates shall, by-and-by, be submitted to their manipulation. With an unprecedented despatch, an admirable code of orders and regulations was framed in about six weeks; and on the twenty-fifth of October, eighteen hundred and forty-nine—one of the greatest days of all the great days for Ireland—the first petition was presented. The name of this courageous postulant should be known; still more, that of the first victim, the protomartyr of the law revolution, who, even in his dissolution, must have been

soothed by the sweet sense of an enviable priority. The petitioner, then, was Joseph Walker; the protomartyr was one James Balfe, Esquire, or as it was always put, with a generous delicacy on the part of these tribunals—In re, or in the matter of James Balfe, Esquire, of Southpark, Owner.

Take it that we are now a famished mortgagee; let us give instructions to Doolin and Company, the eminent firm of Bachelor's Walk, and proceed to sell our Incumbered estate in the regular way. Our relations are somewhat after this fashion:

About five-and-thirty years ago, it came to pass that the Right Honourable Charles Henry Deelish, Baron Savourneen and Earl of Tumbletowers, of Tumbletowers, Co. Mayo, and of Kilgollagher Lodge, Co. Galway, and of Lower Dominick-street, Dublin, happened to be pressed

for money, and was prevailed on to give the preference to the English market. The sum was contemptible—fifty thousand pounds—a mere fleabite, as his lordship's solicitor humorously put it; so, the security being substantial, we, or our trustees—for we were then a minor—agreed to advance the fleabite, and took a mortgage for the amount. For three years, as we find from unpublished data, "favours" continued to reach us with extraordinary punctuality from T. Shine Murphy, Esq., his lordship's agent over the Kilgollagher property; and it was then remarked that they began to arrive in an irregular and fitful way: the intervals, however, lengthening in a steadily increasing ratio. By-and-by the communications of T. Shine Murphy, Esquire, began to be less and less satisfactory, taking the shape of fragmentary payments, wholly disproportioned to the amount due; the balance being filled in

with a cheque for promises to a very handsome amount. It grieves me to state that some time after things came to be upon this footing, all communication with T. Shine Murphy, Esquire, of a sudden ceased abruptly; and from that time no notice was taken of letters, protests, or even gentle legal remonstrances. The only resource, then, was the eminent firm of Doolin and Company, of Bachelor's Walk; and we were presently aboard a slow and heavy hulk, putting out to Chancery with the traditional speed. Then, too, it was discovered that we were but part of a sort of convoy; consort to some dozen or so of hulks with similar sea-going qualities, all proceeding contemporaneously. My lord was abroad in foreign parts with his son, Lord Savourneen, and the Honourable Miss Deelish; and curious to say, was deriving a comfortable income out of an arm which had been considered hopelessly

"bad," and of a "standing" that dated far back beyond the Chancery suit,—but which had been restored by means of a Patent Lotion.

Pursuant to our instructions, the eminent firm of Doolin and Co. have presented a petition humbly praying that the estates of the Right Hon. the Earl of Tumbletowers may be submitted to public competition, and the proceeds applied to satisfy the claims of your petitioner. This document is laid before us, and we are astonished to find that it is utterly illegal—so far as being outrageously brief and succinct, and setting out in plain intelligible English what it *means* to express. We see, too, that the eminent firm has been at the trouble of collecting into one focus, as it were, all the other charges on our nobleman's estate: presenting thus, in a very handy shape, a pretty little narrative of his liabilities. These exceeding half our nobleman's rental (with a

very handsome margin in the present instance), there is found to be no impediment to a sale. It will be matter of surprise how the eminent firm came into possession of such private details, without prying into the tin cases, where lie stored up the mortgages, deeds, settlements, and muniments of the Incumbered Nobleman. But, since the reign of Queen Anne, every such instrument has been exactly registered: and all lenders applied to for moneys, have only to diligently thumb over this huge dictionary of incumbrances. No one lends without being himself entered in the lexicon; and no one lends without seeing who has lent. In this fatal ledger, therefore, is focused the whole land liability of the country. In England two counties only enjoy this privilege, and the incumbrances, instead of being brought together in a complete tableau, are scattered broadcast over the solicitors' offices of the king-

dom. These "very Irish" proceedings are sometimes well worthy of imitation.

The commissioner, gratifying us with a mere formal order for sale, we discover that we have been inviting the Incumbered Nobleman to meet us before the commission, and make any little objections that may occur to him against this rather sudden proceeding: which, indeed, is only reasonable. Accordingly, if he has anything to say, he will "come in" on a particular day and "show cause;" if he has not, he will allow matters to take their course, and "show" nothing. The Incumbered Nobleman makes no sign, so we obtain "an absolute order" for sale.

The case proceeds vigorously. In a few days we are surprised at seeing advertisements, labelled in one corner, "In the matter of the Estate of the Right Hon. the Earl of Tumbletowers," staring at us from every newspaper, requiring all

parties, in severe and stern language, to take notice that such an order has been made. Then follows a protracted intermission, during which, we are informed, that the eminent firm is engaged in "making searches"—that is, consulting the Incumbrance Dictionary—drawing out a compact little epitome of "title," which shall show how it came into the possession of the Incumbered Nobleman. We find also that the eminent firm has taken the mail train down to the estate in question (a very disturbed district), and has personally waited on the occupying tenants at their residences, inquiring from each all particulars as to the exact nature of their tenancy: a proceeding naturally received with much mistrust and suspicion. Some of these poor souls, thinking to foil the inquisitors, whose questions only concealed some sinister design, shut themselves up in an artful reticence, and decline furnishing

any information. The Brothers Cody (Teague and Larry) received many compliments for their skilful baffling of what were called the "Dublin schamers," whom they sent away wise as they came. But, alas for the Brothers Cody! The only result was that the estate was sold, "discharged" of their lease, and the purchaser not having their names in his rental, declined to recognise the tenure of the Brothers Cody.

By-and-by all these labours of the eminent firm, result most unexpectedly in a handsome folio volume, elegantly printed, and copiously illustrated with lithographic plans, vividly-coloured drawings, sections, and elevations, together with tabulated columns, showing the tenancies, rents, and acreage—in short, such a complete topographical picture in one volume—of his estate as must have astonished the Incumbered Nobleman himself. Considering that

some eight thousand estates have been sold, it may be conceived what a valuable library, as illustrating the country, this sort of literature must be; and there are painstaking men who have been provident enough to collect the whole series.

Again have more severe and menacing notices burst out in newspaper columns, and the general public is sternly bidden to take notice that on a particular day, some two or three months off (to give time for its being properly noised abroad) will be set up and sold, the several "denominations" of land, "hereinafter specified," in eighty-five lots, as in the following schedule:

SUMMARY OF LOTS.

Denomination.	Statute Acres.			Net Annual Rental.			Ordnance Valuation.		
	A.	R.	P.	£	s.	d.	£	s.	d.
Knockakilty . . .	569	0	0	215	16	7½	260	0	0
Drumbunnion . .	300	0	0	200	0	6	210	0	0
Ballyshambo . . .	410	6	0	250	6	7	270	0	0
Killemall	26	3	0	30	5	0	41	0	0
Killanaman . . .	56	0	0	42	0	0	45	0	0
Killemcool	250	0	0	270	0	0	310	0	0
Ballyporeen . . .	7	0	0	5	0	0	10	0	0

For its space of two months or so this denunciation looks out warningly from its ambuscade in the advertising columns. It reaches even the Right Honourable the Earl of Tumbletowers, enjoying his lotion annuity afar off at Florence, in a corner of a well-known local print, The Mayo Wrangler. That journal "observed," with regret, that the ancestral estate of a time-honoured and illustrious family, which had not of late years resided among us, would, next week, be brought under the ruthless and destroying hammer. The grief of the local print was very unaffected, yet that balm which comes of Gilead takes many soothing shapes. The advertisement of the coming holocaust, blazing in conspicuous type, formed a column of the local journal.

The space of two months being all but run out, and copies of the illustrated topographical memoir having fluttered across the sea to every note-

worthy coffee-house and news-room in the kingdom, it is presumed that a decent amount of notoriety has been obtained. Vulgar agriculturalists, mean-souled graziers, have been measuring critically those Corinthian meads. The sacred demesne has been broken up into convenient "lots" with a horrid profanity, to encourage the growth of "a small proprietary." The Incumbered Nobleman himself has not yet realised it. The old protecting spirits from Heavenly High Chancery, Reference, Decree to account, and other angels of protraction, will still descend, even at fifty-nine minutes past ten—on the stroke of the eleventh hour—and interpose.

The fatal morning has at last come round, and we, the famished, baffled, long-outraged mortgagee, feel an Indian pleasure in going down to see this scalping of our enemy. There is a

splendid time coming, and no waiting a little longer. So we stride through the great hall of the Incumbered Nobleman's mansion, where my lord and my lady's chairs used to wait during those fashionable parties before the Union, and make straight for the great auction-room.

Judicial auctioneer is sitting afar off, aloft in his rostrum, knocking down statute acres, roods, and perches, according to his function, but with a grave and measured utterance. Some one points out that this is the third commissioner—or the young man whom nobody knew—but who has since got to be rather better known. There is a crowd of solicitor interest, of agricultural, metropolitan, local, and other divergent interest, who are all furnished with the topographical memoir, and contend for lots with a savage competition. It is hard not to admire the professional manner in which judicial auc-

tioneer does his work, for all the world as though he had been bred to it: falling into the correct cadences of suspension, of pathetic entreaty, of remonstrance, and often one last lingering appeal of suspension, all conveyed without any vulgar iteration. It is to be regretted that the function should have been delegated to meaner hands. Finally, we find that judicial auctioneer, who has all this time been working briskly through Knocakilty, Drumbunnion, and other euphonious denominations, is now "declaring the purchaser" for the last lot, and has left the Incumbered Nobleman without a rood. The family castle of Tumbletowers, an awe-inspiring mass of turrets and battlements, which, with its fittings and decorations, was said to be contracted for at some fifty thousand pounds, was included in the last lot, and absolutely did not swell the price one shilling. To be sure, the builder's little account

had never yet been settled, and it was likely that his heirs and assignees, walking nearly last in the procession of incumbrancers, might come in for a thousand or so of his bill. But it has been remarked that, somehow, a cruel blight waits upon these noble but unpaid-for tenements. By the unhappy law of incumbered sales, the rich demesne lands are purchased at good figures, and the noble but unpaid-for mansion is thrown in.

An inflexible strictness, reaching almost to the casuistical, marks all the dealings of the judicial auction-room. A sort of code peculiar to itself has gradually grown up. Once the mystic solemnity of "declaring the purchaser" has been gone through, the sale is decreed eternally. Bidders, napping for an instant—whispering or inattentive—have, within a second after that final declaration, been known to offer thousands over the price—and have been eternally refused by

the incorruptible Medes sitting aloft upon their rostrum.

The tradition of that first inaugurative sale still survives. The name of the earliest victim should surely descend with a certain notoriety. He who was thus exposed mercilessly to the fury of the Jacobins was called, surnominally, Balfe —baptismally, James—and the first morsel cast to the hungry executioners was all that and those the lands, tenements, and hereditaments of Southpark, in the County of Roscommon. The day of immolation was Friday, February the twenty-second, eighteen hundred and fifty; the price fetched, equivalent to some three-and-twenty years' purchase. A notable day. Bidding was at first a little languid, owing to the novelty of the thing, and the chief commissioner, a Baron of the Exchequer, gently remonstrated. "We are not," said he, "about to adopt the phrase-

ology of the auction-room, and say, 'Going, going!' at every fresh bid." The remark of another commissioner brought the thing home to each spectator in a startling manner: "The purchaser can have his *conveyance executed, sealed, and delivered this very day!*" "And," added the third commissioner, a little facetiously, "it will be satisfactory to him to know that a very small box indeed will hold the conveyance!" A small box! They were as yet scarcely familiar with their tools and machinery; for the printed form of conveyance barely fills twenty lines, or half a page of duodecimo print. By-and-by, it was expanded into a single skin of parchment, which even included a map.

No wonder that this unworthy spirit of abbreviation should be resented. From Irish Chancery-lane, rose a deep cry of disquiet. The profession had been betrayed, even "sold!" the legitimate

fruits of its spoliation cut off. Now, were remembered with a regretful feeling, reaching almost to affection, the soft protraction, the legal sweetness long drawn out, of the olden Chancery days. Generous professional minds could now only think of their benefactress with an amiable longing. "Give us back, give us back," they shrieked, "the professional wild freshness of receivers' accounts, of answers, of exceptions to masters' reports! The bark is still there, such as it is, but the barristerial waters are gone!" It is on record that a solicitor's bill for costs, searches, drafting, conveyance, and other charges, was actually presented under the new system at the degrading figure of some eight or ten pounds. After this cruel stab, well might the profession cover up its head decently in its gown, and sink down, Cæsar like, at the base of the next convenient statue.

The sacrifice of the Tumbletowers estate being

thus complete, we are given to understand that fourteen days of grace will be granted to the purchasers to "bring in" their moneys. Their moneys are "brought in" to the Bank of Ireland, which has often held floating balances of nearly half a million sterling, to the credit of the court, and is reputed to turn some forty thousand a year by the temporary manipulation of those funds. In one lucky year of grace, eighteen hundred and fifty-five—actually a million and a half was said to be lying in its coffers—to the credit of the Commission.

A few purchasers have applied to be released from their bargains, on the ground of mistakes and errors in the rental, discovered afterwards: some still fewer have made default and subjected themselves to the disagreeable process of the court known as "attachment."

The money being thus paid down and the land delivered, the distribution amongst creditors follows

next. Then sets in the storm and battle of incumbrancers, hitherto combined against the common enemy, but now distracted with an internecine competition. They stand upon the order of their going or rather coming. He that is first, is paid first; those who fall under the unhappy category of "puisne," or later and latest in time, must stand by and look on ruefully as the funds melt away. There is but a poor chance of its lasting out to their turn; a still poorer of there being a margin over for that hapless puisne incumbrancer of all, the owner. Therefore do they battle with one another for priority, and strive to trample their way through the crowd to the front. But one week is allowed on an average for this struggle, and the cloud of vultures (birds with mortgages, judgments, and other charges, in their talons) who are wheeling in the air in disorderly circles, are at last allowed to swoop in their turn and each to carry off his morsel. There are some

thirty or forty proprietors now over the fair lands of Tumbletowers, and we, no longer a famished mortgagee, have returned to our own country with a cheque for principal and interest in our pocket.

CHAPTER III.

THE CURE.

Remains now, to sum up the labours of these vigorous backwoodsmen, who, with their stout legal axes, have entered into the bush country and cleared whole miles of incumbered districts. From the day of the fatal auto da fé, when unhappy James Balfe, Esquire, of Southpark, headed the procession in his San Benito shirt, on that twenty-second of February, eighteen hundred and fifty, down to the last day of sacrifice in eighteen hundred and fifty-eight, it is registered that nearly two millions of acres, or about one-seventh

of the available surface of the country, has been disposed of by public auction. Nearly four-and-twenty millions sterling have been paid into the hands of the unflinching triumvirs, who nicely weighed and determined conflicting claims, representing a sum of some two-and-twenty millions. Nearly four thousand petitions from creditors have been presented, praying for a sale; eight thousand estates have been brought to the hammer; and some four thousand titles have been scrutinised by the triumvirs themselves. For this hodman's work was part of their laborious round of duty; and each personally waded through those dirty waves of vellum and faded yellow paper on which the true title to an estate usually drifts down. Indeed, it is a curious feature in the whole proceeding, that many who protested against the new innovation, and forecast innumerable dangers, own that their predictions

were falsified by the special and exceptional character of its administrators—by the jealous care and untiring watchfulness of the three commissioners. The old-fashioned Chancery Dilly rumbled on at a slow walk, and was ten years distributing a million sterling. The new legislative engine dashes by, express, and scatters four-and-twenty millions within the same space.

Many wise seers and prophets, and some hopeful men, went sadly astray in their vaticinations. There was to be a complete shifting of proprietary, a fierce irruption of moneyed Saxon bone and sinew; and that curious surgical process, the opening of an Hibernian artery and the introduction by mechanical agency of a foreign ichor, would be performed satisfactorily. The result astounded even those who looked with apprehension on the certain extinguishment of a brave and faithful peasantry. Out of eight thousand five

hundred and fifty purchasers, it was found that only three hundred and twenty-four were of the foreign element: the overwhelming balance of eight thousand two hundred and twenty-five, being natives. Thus, too, was in part remedied what was pointed out by the Devon Commission as the most fatal hindrance to the advancement of the country: the absence of a middle-class proprietary with small holdings. It was noticed that the foreign element introduced itself early in the first rush, but afterwards wholly disappeared.

It was hardly to be expected that these new captains, strange to their work, could have got through the thick of this mingle-mangle of figures, acres, maps, surveying, conveyancing, law, and auctioneering, without some casualties. Some bad legal seamanship might reasonably be looked for, and handsomely extenuated. It was no fault

of theirs, that in that glutting of the market, in the earlier days, land should have gone off at miserable sacrifices. There were instances of estates sold at ten years' purchase, which, three or four years later, fetched twenty-five: to the luckless owners' mortification. The Castle Hyde Estate near Cork is a notable instance. In the year 1851, it was purchased for between thirteen and fourteen thousand pounds: in the year 1861, it fetches within a few pounds of forty-five thousand pounds. There was actually a tradition of one accursed domain which, under some unholy blight, brought but *one* year's purchase! The rental was set down at six hundred pounds, and it fetched but six hundred pounds! But on scrutiny it proved that this was an airy impalpable rental, which, being drawn from miserable paupers and shattered tenements, on which, instead of roofs, lay a load of hopeless arrears, shrank into

a very mean rental indeed, more than handsomely represented by that one year's purchase. There was something like abuse in that instance pointed to by Lord St. Leonards, where a creditor for eleven pounds contrived to have an estate of six hundred a year sold for his demand. In that legend we may justly suspect misapprehension, or varnish of some kind. As to the law, such captains were safe enough; but how was it with them in that matter of surveying—that manipulation of nearly three million acres? Judge Hargrave owns penitentially to some failing of this nature. "In one or two instances," he says, "we encroached a little on the adjoining property, principally bog; but the compensation was so trifling and ridiculous that the injured party usually gave up the point." A few roods of bog, astray in some three million of acres!

Some three or four cases of greater hardship

stand against the commissioners. Three or four persons have suffered out of—take it to be a million others—whom they have dealt with. A not very heavy per-centage. The wisest law is but a beneficent Juggernaut, which must crush some few victims.

There was "the great case" of Errington and Rorke, which travelled up slowly from the Assizes to the Court of Queen's Bench, from the Court of Queen's Bench to the Court of Exchequer Chambers, and from the Court of Exchequer Chambers to the House of Lords; and on which hung more serious questions than unprofessional outsiders dreamed of.

A Mr. Rorke had the misfortune to be a tenant, in the enjoyment of a lease for three lives, upon an estate which was about to undergo the salutary purging by fire, of the Incumbered Estates Court. With other tenants he received

due notice, furnished his lease, had its existence duly acknowledged, and went his way secure and comfortable in mind. The sale took place. Adjoining lots were sold, but not the lot in which Rorke was interested. Before matters were concluded, one of the purchasers, Mr. Errington, proposed to exchange a portion of his newly acquired territory for the lot which had *not* been sold, and which was in possession of the unconscious Rorke. Through some unhappy misapprehension, this was agreed to; a formal conveyance was executed; and luckless Rorke, dreaming in fancied security of his three lives and certain terms, was one morning confounded at finding himself considered as an interloper and trespasser. There was no mention of his lease in the conveyance. He was promptly dealt with, by ejectment; Mr. Errington having only to show his conveyance to the jury. But the point was

"saved" and carried to a higher tribunal. The judges were strangely divided. It did, indeed, appear that it was the intention that the title given by the court should be almost of an omnipotent character, indefeasible, not to be disturbed by mistake or any possible contingency. Still it was urged that it could scarcely have been contemplated that in selling Mr. A.'s incumbered estate, Mr. B.'s adjoining and flourishing domain might, through a mistake, slip into the conveyance and be irrecoverably handed over to a purchaser. The discussion began to excite intense alarm. For some seventeen to eighteen millions sterling had been already invested on the faith of this parliamentary title, which was held out as being secure against all the world; and visions of newly-found flaws, and fresh legal groping among those hateful yellow deeds and parchments, sat as horrid nightmares on the breasts of purchasers. The

battle was accordingly fought out, over again, at the bar of the House of Lords.

There, the law lords condoled with the unhappy tenant, and the exceeding hardship, but felt themselves constrained to support the Incumbered Estates Court and the judgment of the court below: the Lord Chancellor dwelling specially on "the very masterly and satisfactory manner" in which Chief Justice MONAHAN had dealt with the case—a name now very familiar to the public from the unprecedented eulogy which was lately poured upon it from all sides of the House of Lords, and which the Lord Chancellor characterised as belonging to the "ablest and most enlightened judge that ever adorned the bench!"

There was Colonel Keogh's case—a case of exceeding hardship. This gentleman's estate had been submitted to the process of being saved, yet so as by sale; the money had been distributed,

but, unluckily, in paying off an old judgment debt, the commissioners had paid the wrong person. When all was concluded, when the moneys were disbursed, and when the estate was in possession of the new purchasers, the original judgment creditor appears upon the scene, and forces the late proprietor to discharge this debt a second time. It was cruel "miscarriage" of justice, as the indulgent phraseology of the law would put it, and the victim has petitioned the House that some special relief may be granted to him. The House however has recently determined that justice should be done, and that the injured officer should be recouped the full sum.

These are cases of hardship, truly, where the innocent have suffered for the general good. Rorke and Keogh are as the canonised martyrs of the Incumbered Estates reform. But where, after all, has the huge legal diligence rumbled on, and run over so few?

The Divinities of Appeal in the Upper House—the Law Lords of Olympus—have striven hard to preserve the inviolability of this cherished instrument. It is to be the very Susannah of conveyances. A perfect Vestal Deed. If ever there was a formula aiming at a sort of earthly omnipotence, irrefragible—impregnable, it was in this mystic document. It was to be a shield against the whole world—good against all generations of men—quibblers should not prevail against it. Mistakes might be deplored—a crying piece of injustice compensated for—but the deed was to stand unshaken and immovable. Henceforth no more appeals to Olympus. Henceforth no legal conjuror shall perform the wonderful legerdemain trick of "getting behind" one of the new patent conveyances. Neither shall any legal tourist—of whatever skill—be able to "travel" outside "the four corners" of this wonderful instrument. And

yet scarcely has the echo of the divine utterances died away, when the sounds of secret nibbling and furtive scratching are heard behind the Equity wainscoating. The ingenious sappers and miners of the law are at their work again. It is the old Jansenist controversy revived, with Pascals and Arnaulds in wigs. The famous Bull condemned the famous five propositions taken from the Book of the Great Sectary. His followers accepted the fatal decree with completest devotion and submission; but artfully insisted that the condemned proposition were not to be found in the famous Book. Hence the grand Battle. So with our legal Jansenists. There is an obedient acceptance by all faithful "Wigmen," as Mr. Carlyle would call them, priests and laiety of the great communion; but they are presently artfully contending that here is a *particular* case which falls not within *that* principle. The condemned proposi-

tions are not to be found in *their* Book. And hence, *Booth* v. *Daly,* and *Rochfort* v. *Ennis,* float to the surface, and again is the peace of the legal church disturbed.

From the very nature of their proceedings, which are usually only the last act of a whole generation of family troubles and misfortunes, it is to be expected that some dramatic bits, and names and incidents of a historic kind should cross us. When a short time since a Grand Duke of England fell—and fell with prodigious crash and confusion—a whole cloud of historic associations came flowing from the profaned cabinets of Stowe. With the disturbed particles floated out memories of the Grenvilles and the Nugents, and the famous times in which they lived. There was a deep sympathy abroad for the noble genealogical ark thus profaned. But where there has been a long procession of broken noblemen and gentry, defiling

helped to this result. When these cab freaks were going forward, the unhappy nobleman had but a few acres left. His turn had come unluckily during the experimental days of the Institution; and the fair domains, with the estates, and grand show castle, "went" at a tremendous sacrifice, *pour encourager les autres.* A dark Mephistophiles figures at intervals, hurrying on this downfall; and the late Mr. Sadleir is reputed to have been the evil genius of the piece.

In *Booth* v. *Daly* the legal Jansenists first broached their heresy. Booth is a new settler, who has driven out the old aristocratic aborigines, and here in the little half historical, half biographical summary prefixed to each case, and which is really the only light reading for those wandering thirsty through the great Sahara of the Reports—occur the names of Mornington and Wellesley, and Long, Tynley, Pole, and straight-

way the cheerful burden from the Rejected Addresses breaks in unauthorized, and with unseemly levity. These names are now swept away in the flood, and the *novus homo* stands in their room.

This Booth and Daly question took this shape. A purchaser buys his estate subject of course to all existing leases, and the tenants pass over to the new proprietor along with the land. Looking through his diminutive conveyance he finds that it has been sold to him "subject to the leases in the schedule annexed," and looking at the schedule annexed, he discovers that the rent to be paid is a particular sum, say some fifty or sixty pounds annually, which, however, the Court of Chancery has reduced, long ago in the "*bad times,*" to about one half. The new proprietor imemdiately on entering into possession demands the old original rent from the surprised tenant.

The surprised tenant remonstrances in due form of law, and on briefing paper. No, he says, the estate has been sold, subject to the existing leases, and the existing rent. The existing rent is the reduced amount; therefore by it you must be bound. No, protests the landlord, I have bought subject to the lease and its rent, and the original rent in the lease is the larger sum. The smaller sum is a mere temporary reduction. I appeal to the sacred character of a conveyance—the hallowed ark of Errington and Rorke. And with the purchaser the judges agreed. Again were the fires of legal Jansenism tramped out. The inviolability of the conveyance is triumphantly maintained.

But the heresy was hydra-headed. Presently are the sectaries at their work once more. They accept the canons in *Errington* v. *Rorke:* they bow to the rubrics of *Booth* v. *Daly;* and yet here

they are once more ventilating their baleful tenets in a fresh objection, *Rochfort* v. *Ennis*, but with more success. In *Rochfort* v. *Ennis* very nearly the same point rises. The facts are about the same, but with this difference; that the reduced rental, the benefit of which the tenant is enjoying, is actually mentioned in the *Conveyance* itself, not merely alluded to as in another document. The splendid infallibility therefore of the conveyance overshadows the reduced rental; the magic omnipotence of that instrument favours the regal heresiarchs; and though the judges are exactly divided in opinion, by an arrangement of pure form, judgment is given for the inviolable integrity of Parliamentary title. To which end these legal Jansenists, while apparently establishing an empty and unsubstantial success, were blind contributors.

There was the incident of the simple Provincial

Farmer, who came up from the country with money in his pocket, or in the family stocking, to bid for his own special holding. The price reached to some five hundred pounds, by the usual progression of fifties, twenties, and tens; and at that point began the drag and halt, significant tokens of final cessation. Provincial Farmer's heart begins to palpitate; he sees himself already "laird" and owner in fee. Suddenly—just as the mystic words are about being spoken—a figure stands up at the other side, and leaps sonorously at one bound to exactly double the last bid, namely, one thousand pounds. Poor Provincial Farmer is aghast and utterly confounded. A terrible struggle takes place in his breast. Five hundred surely was its utmost value; but then "the Dublin gentleman" must know—must have metropolitan wisdom and experience; and so with a spasm he offers one thousand and fifty. At which sum it

becomes his. Poor Provincial Farmer! The actual value is barely five hundred pounds; and it is presently discovered that the rival bidder was an escaped lunatic, who had wandered into the court, and whose hallucination had taken this curious shape.

There was the case of the purchaser of a small lot of say fifteen hundred pounds value, who became a defaulter, was "attached" by the court, and eventually hunted over the continent of Europe in an ignoble chase; was eventually captured, brought back, and discovered to be a pauper. The legend goes on to relate how the lands were again set up to public auction, and again knocked down at about double their previous price, and how the new purchaser discovering some flaw or misdescription, insisted on being released from his bargin, and was actually released. And how the unlucky lot, (or lucky lot, as it will presently

appear) was for the third time set up; and how there was a valuable mine discovered in its very heart; and how it was eventually and for the last time knocked down for fifteen or twenty times its late price. These are the little bits of comedy in the Incumbered Estates Court; the bits of tragedy are unhappily too many. For a piece of farce, we have the Dissenting Chapel, purchased as a "lot," by a High Church bidder, who receiving his conveyance, closes the doors in the face of the astounded congregation. To whom, however, it is believed compensation was awarded by pitying commissioners. There is no special chapter and verse for these legends. They float up and down the Hall unaccredited.

There is the legend of the shooting purchaser, who was partial to that healthy pastime, and particularly fancied a strip of shooting mountain which was marked out distinctly on his map.

The shooting purchaser goes down with friends, with dogs and guns, to celebrate his new ownership, and is "beating" the strip of mountain-side, when he is met by an angry lord of the soil, who warns him off as a trespasser. The angry lord of the soil is in his turn warned off as a trespasser. Follows then mutual recriminations, with an appeal finally to the conveyance. When it is discovered that through some error of description or mapping, these shooting grounds are not in the barony, or "denomination," mentioned in the conveyance; but in a wholly distinct barony belonging to the innocent gentleman, who was thus disturbed by the no less innocent trespasser. This incident was but of yesterday.

In the year eighteen hundred and fifty-eight the term of this wonderful tribunal ran out; and in the month of August it passed away quietly and without a struggle. It had been long known

to be ailing, for the strange reason that it had no work to do: its labours in the last month of its existence dealing with some seventeen or eighteen petitions, or about four and a half to each judge. What would we have? Its functions were accomplished. There was nothing left for it to sell; there were no more patient mortgagees, exasperated by long suffering, to petition. Everybody was paid. Nobody was incumbered of land. These are, indeed, the great days for Ireland. A newer form of machinery is now at work, under the title of the Landed Estates Court, and is ment to deal with unincumbered as well as incumbered lands; with a wider philanthropy, it opens its arms even to any dwindled lease under sixty years. Any owner now, nervous as to his title, may come in and have it riveted and steel-plated, and made capable of resisting all attacks. The Right Honourable James Whiteside is the sponsor

for this new system: and his name thus becomes associated with two most important Reforms in the Irish Code: namely the Common Law Procedure Act, and the New Landed Estates Tribunal.

The whole tendency of both these systems is to promote a free transfer of land; so that the conveyance, perfect and complete in itself, may pass from hand to hand, a land bank-note, and of which the owner may divest himself at a moment's notice, like railway shares or other scrip. Such a system is already at work in certain foreign countries, and is found to answer well.

For the end, remains the pointing of the moral. What may be done with five-and-twenty millions may surely be done with ten times that sum. There is a huge superficies in Great Britain, already handsomely burdened; there are mortgagees hungering and thirsting after their proper moneys, and labouring through the protracted

formalities of the English Court of Chancery, to recover it. The cumbrous engines of that establishment are too slow and old fashioned for the work of the age, even after all alterations and remodellings. They should be taken down, and new machinery put up with all convenient speed

CHAPTER IV.

"PORTABLE PROPERTY" IN LAND.—JUDGE LONGFIELD'S PROPOSAL.

THERE has just been given an account of a certain Irish Revolutionary Convention, which has confiscated, by way of public auction, the estates and interests of divers *suspects* who had traitorously incumbered themselves beyond their strength. The legal doings of this terrible tribunal, its rough and ready justice, and wholesale slaughter of innocent owners, mortgagers and even unoffending solicitors, are now matters of history. Their guillotine—their hammer, that is—descended with a fatal precision, and the

executioners pursued their task, steeped to the armpits in the gore of slaughtered mortgages, deeds, settlements, charges, and contingent terms. We actually slipped in the pool of innocent ink. While aloft sat the three Commissioners of Public Safety, Judges Marat, Danton, and Robespierre carrying out their stern office.

Naturally, this machinery, based upon rough wholesale principles, and working with broad and sweeping strokes, came by-and-by to be regulated by nicer and more discriminating adjustments. The huge Nasmyth falling hammers which kept pounding malleable mortgages, settlements, and all the equities, into one monster mass, might be so far controlled as to be capable of the delicate manipulation of an airy leasehold interest, almost as inappreciable as the famous needle. This grand forging principle once established, it would be easy to multiply it in all manner of appliances,

and even refinements; and now, Judge Longfield, who has been so to speak, foreman of the works for many years back, comes to us with a little ingenious bit of mechanism of his own, and with his skill and experience has a very just title to our attention. It is proposed here, in a few words, to explain this rather novel scheme, which indeed seems no more than a legitimate corollary to the famous Incumbered Estates Act.

It will be borne in mind to what a very simple expression the intricate algebra of title in Ireland has been reduced. Abstracts of title, searches simple and negative, copies of deeds, settlements and counterparts of leases, charges and terms of years, the groping after a tenure by hapless chamber counsel, the brakes and quagmires of faded scrivenery, these things have all been swept away by the legal besoms. Stout navvies have been sent into those dungeon cellars, and have

carted away load after load of the old bones, digging into the rotting adherent masses of discoloured vellum and decaying bales of scribbled paper. After which stable work, and a prodigious deal of winnowing and sifting, remains at the bottom a clear sediment or deposit, and we hold in our hands a clean bright square of vellum, which can be read through within a space of five minutes. Judge Prospero has waved his ruler; and the grim fortress of hideous old Giant Blunderbore comes crashing down in a dust and crumble of ruin, and discovers the amiable little Fairy, Good Title, standing unharmed in the middle.

That little square of parchment, as we all know, is unimpeachable. It cannot be cut or shredded, or morally speaking, have a hole picked in it; still less can it be visited by the tremendous operation of being driven through by a coach-and-six. It is saturated with the parliamentary elixir,

which is *omnipotence*. It bids defiance to the powers of darkness and to ingenious solicitors. It is victorious and unconquerable. No one, to use the proper technical phrase, can "go behind its back;" that is, apart from the small accommodation it would afford for such concealment, it has the power of healing all flaws and fatal errors prior to its own. That small sheet may be the adequate and most convenient token for a rental of fifty thousand as for fifteen pounds a year—a vellum bank-note whose specie is land, and which can be converted into specie at a moment's warning.

This facility of transfer is a very precious element in the value of any commodity; for the truth of which principle we have no need to visit the political economists. The old monster armoire that groans and strains as it is stirred, and can by no means be brought down stairs, is held in

poor estimation beside that compact little casket which we can take to market with us and dispose of out of hand. Our estate, instead of being a huge unmanageable monster, which we can divest ourselves of only by slow and protracted circumvallations, and the tedious operations of a siege, has been now miraculously transformed into a light and handy chattel, which may be disposed of at an hour's notice, like a horse, or furniture, or other "portable property." It is no longer as that huge unwieldy present of an elephant, which, we are informed, Eastern sovereigns are in the habit of bestowing on unlucky subjects whom they have delighted to honour, and which must cleave to them whether they will or no, until, by its suitable maintenance in all dignity and magnificence, it has ruined them.

But the old spirits have not yet been wholly exorcised. The grim ogre of mortgage still walks

the earth in all his clumsy and unwieldly terrors. All the ponderous apparatus for charging of lands, cumbersome as the old agricultural machinery, still lies in the legal farmsteads, and has to be dragged forth, creaking and groaning, according as occasion serves. Furnished with the handiest of conveyances, you may sell ere the familiar words "Jack Robinson" have flown from the lips; but ere you can happily and successfully mortgage, you may drag, as did lately the ingenious mnemonic gentleman, through all the books of Milton's great epic. For sellers, there is the Happy Despatch; for borrowers, the slow lingering tortures of equity draughting. To redress this inequality has Judge Longfield, long one of the painstaking commissioners of the Court of the Happy Despatch, comes forward with an ingenious scheme which has received a good deal of public attention—and deserves consideration in this place.

It is well known that the Law has a series of Lay figures or Puppets, with which it points its morals, adorns its tales, and which it uses as ingenious illustrations, when it grows didatic and would make its meaning clearer. These it calls John Styles, John Doe, Richard Roe, John Thrustout, and others. John Styles when it becomes necessary for him to contract wedlock, is invariably united to a lady of the name of Eliza Kempe; and always resides on an Estate known as Blackacre or Whiteacre, which properties are henceforth in eternal litigation. And a strange feature in all their family settlements is that they depend on when Mr. Styles goes to Rome, or shall return from that Eternal City.

Supposing, then, that we, adopting this imagery, become John Styles, much pressed for money, and wishing to raise a loan by way of mortgage on our ancestral estate, known in the parish as

Blackacre, the first step must be to explore the country diligently for a familiar spirit yet equitable, who asks no richer manna than legitimate five or six per cent. This Being is not ready to hand; he is not quoted in the market; he has to be sought for and unearthed badgerwise; and, when found, to be humoured gently, and soothed by the tender offices of a friendly solicitor. In a surly grudging way, then, he is content and will lend, and we then fetch down, out of tin cases bursting with leases, charges, conveyances, judgments, and settlements, the whole frayed and tawny miscellany of unclean bundles, which is happily epitomised in the words "OUR TITLE," and we pack them off in a cab to friendly solicitor. Friendly solicitor, by-and-by, and at his leisure, has a neat little abridgement or epitome of each instrument made out—a sort of pretty tableau in miniature of all the links in our

"chain of title," now, by the way, sadly twisted and entangled—which is sent with clean copies of the yellow-frayed deeds to Serjeant Rebutter, Q.C., a notorious authority on these matters, for "advice and opinion." These costly steps are all at ours, the borrower's, John Styles's, charges.

Rebutter, Q.C., in all human probability reporting that our title is faulty, and that somewhere towards the year seventeen hundred and thirty-five, in the time of John Styles the elder, there was a rusty link which had parted, the old yellow bundles, the neat little tableau, and the clean copies in fine caligraphy (This Indenture being in a rich and florid German text, bounded by red lines), all come back, being returned, with an ill-disguised contempt, in another cab. Again the line is cast; and a new lender rises. The yellow bundles and pretty little abstract are taken

out for an airing, and left with Boggs, Q.C., 3, Fig-tree Court, who, I need scarcely mention in this place, is the eminent "opinion" of that name. The eminent "opinion" sees that rusted fracture already noticed by his brother Wyndebagge, but thinks something might be done in the way of tinkering or piecing; nay, will take that office on himself. And so, perhaps, after a decent delay, the thing may be at last accomplished: and we, John Styles, the borrower, are in possession of the money.

And yet it is hard that we, John Styles, the borrower, to obtain this little accommodation, should have to be subject to one of the humiliating incidents of vulgar pawning. Those title-deeds, on which Boggs, Q.C., the eminent "opinion" has smiled a gracious approbation, usually pass into the keeping of our creditor by way of gage or pledge. He becomes proprietor,

good-naturedly allowing us a use and occupation. The pawner often finds it a heavy inconvenience to be deprived of his deeds and papers, thus rigorously detained by his Pawnee chief. So far it seems a weary troublesome business, this raising of money upon that best foundation of all security—terra firma—land. The road seems to have been purposely roughened and broken up into pitfalls, to facilitate the accommodation of the borrower.

And should the lender desire to have his moneys again before the time appointed, and offer that property, of which he is titular owner, as security for a loan to him, he then becomes a distressed borrower in his turn, and has to submit for fresh disembowelling at the hands of an eminent opinion that recently disembowelled title of which he has the custody. The old birdlime adherence goes with every change of real pro-

perty. For borrower, and lender, and mortgagee, it becomes as a closely clinging shirt of Nessus that sticks to the very flesh, only to be drawn off very slowly and with protracted pains and tortures. Further, this ultimate mortgage, with all its intricate incidents—transfer, repayment, and reconveyance—goes to swell the bulky rolls of deeds; and some fifty years hence, when our heir, John Styles the younger, is hard pressed for moneys, it shall be sent away in a cab of the period, to be probed and peered through by a new Serjeant Rebutter, the eminent "opinion" of that day.

It is clear, then, that this primest of all securities labours under practical disabilities. There seems to be something unfair and very partial in this treatment. Eliza Kempe (who is Mr. Justice Blackstone's figurative woman, and lives and has her being in law only) has what we

may call a rent out of the Whiteacre Junction Railway, as we have out of the Blackacre estate. Yet may Eliza Kempe go down to her banker's, and in twenty minutes have a loan advanced to her on deposit of her scrip; or, if she prefer to sell, there are Messrs. Omnium, the well-known brokers, who will let her have the money in half an hour. So, with the rent paid by the state in the public funds; so, with mining, steam-packet, and other shares. There is nothing adhesive in these worldly treasures; they do not cleave to us whether we will or no. Eliza Kempe may have done with them for ever, as readily as she can take off her shawl or bonnet.

The new scheme, then, for emancipation of the acres of these islands, and turning them more or less into that portable property which Mr. Wemmick was partial to, is very simple. Mr. Styles, our spectral legal man, may be again requested to

stand up for a moment to bring his utopian estate with him, just to make things clear. Perhaps Mr. Styles's estate may have been purchased but yesterday in the Landed Estates Court, and his title is speckless, virgin, and parliamentary; or, perhaps, being of an older standing, it has been newly passed through the rollers of that engine, and been made about as good as new. As the Messrs. Erard will take home a veteran pianoforte, and revive and rebuff it, so may an ancient estate, very lame and weak in its joints, be carefully rebuffed, and turned out rejuvenescent in this Irish court. Either case will do. It is proposed, then, that when Mr. Styles is receiving his little vellum strip which is his title and conveyance, there should be handed to him a number of little notes of parliament, to be called debentures, printed and filled in, according to a certain form. At *that* moment they have no

value; but they can be made valuable at any moment. Take it that for Blackacre there has been paid a sum of twenty thousand pounds; then Mr. Styles shall receive with his purchase, ten of these blank forms, or notes, each for one thousand pounds, or altogether equalling one-half the value of the estate. These blank forms are put by in Mr. Styles's desk. By-and-by, when Mr. Styles becomes pressed for moneys, and in that disagreeable position that he must have two thousand pounds before this time to-morrow; he takes out two of his vellum debentures, has them properly stamped and registered (there are, of course, little technical guarantees against fraud and forgery, which are in this place immaterial), and takes them, as he would railway scrip, or stock, to a broker, to be converted into coin, precisely like those other securities. These land stocks, as we call them, will, of course, fluctuate

with all the agreeable variety of the more established securities, ranging from above to below par, according to the usual laws. Interest at so much per cent, will be payable to the holder, as in the case of the funds.

The advantages of this plan are very striking. It will be observed, that as the debentures are created along with the first possession of the estate, and as they enter, as it were, into being with it, there can be no charge or incumbrance previous to them in date. Again, the existence of the debentures and their number is carefully noted in the body of the conveyance of the estate; and, on the other hand, in each debenture is a description of the conveyance. Thus any one who would fraudulently try to raise money after exhausting his debentures, would be betrayed the moment he exhibited his conveyance. Such precautions are pure matters of technical detail, and present

no difficulties. There are abundant precedents and analogies in the safe-guards that hedge round railway scrip and debentures in the funds.

It is surprising that this principle of converting land into "portable property" should not have obtained in England before now, a country where no commercial element is suffered to lurk undeveloped. This ready circulation and prompt exchange is understood to be the basis of successful trade and prosperity, yet it lies here a neglected and unworked mine. Stranger still, in foreign countries it has been in vigorous operation, even on a gigantic scale, for nearly eighty years; and brute inert land has long been made to "fonctionner" according to the French phrase, that is, forced "into function," and made to work, and shift, and fructify. It is fairly naturalised in Russia, Prussia, Poland, Austria, Bavaria, Belgium, Saxony, Hanover, Denmark, and France.

Such as would have a complete tableau of these huge operations over all Europe, should consult M. Jossieu's elaborate Report of the year eighteen hundred and fifty-one. They will be astonished by the extraordinary array of figures made to "fonctionner."

It is a remarkable proof of the substantial character of these "territorial" securities, that through all the German wars they were always quoted at from eight to ten per cent higher than the ordinary government funds; and at the present day they keep steadily from two to three per cent in advance of state securities bearing the same rate of interest. There are, however, some serious difficulties in the way, before Judge Longfield's scheme can be made to work smoothly. For convenience sake, there will have to be found some intermediate agent between the public and the landowner, to whom buyers of land scrip, changing

every day and passing their debentures from hand to hand, shall look for a steady and certain payment of interest—under guarrantee as it were. The holders of new Threes, shifting every day, yet know that the stream of interest flows surely and securely at the Bank of England. The holders of Mr. Styles's new Fives (land stock) must always feel an uncertainty whether they will not have to apply at that gentleman's residence for their annual interest; or whether it will be left waiting for them at some undetermined region; or whether it may not be forgotten altogether, even with pains and penalties impending, analogous to the protest of a bill. Again, it would be scarcely reasonable to expect that Mr. Styles should personally keep his eye on each debenture as it changes owners, and have to trace out the last holder on the day the interest falls due. This difficulty is met in foreign countries

by the agency of the bank, a conspicuous and notorious institution, which guarantees the interest at the fixed date, whoever be the holders. It has dealt directly with Mr. Styles, advancing him moneys, and receiving in return his debentures. These it endorses and sells again to buyers from the public, guaranteeing, as has been stated, the interest; receiving the interest from Mr. Styles in the regular way, or enforcing it by process of law. Such a bank, therefore, it would be necessary to have in this country.

Another and more serious objection would be its tendency to encourage a gradual and excusable, yet not the less fatal, extravagance in proprietors of estates. Not that vulgar lavishness which consumes the idle and the thriftless, but that irresistible temptation, either from reason of temporary difficulty or real pressure, which at times visits the prudent and industrious. It must be

a prodigious self-denial which, in the face of a pressing want or pecuniary trial, should prefer to do battle with a heap of thousand-pound notes (or what is equivalent to such) lying in one's drawer waiting only to be changed. So would the treasure melt away by slow and insensible degrees. That this would be one result, is undeniable; yet it may be doubted whether a perverse moral tendency, however to be deplored, should have much weight in a broad question of political economy.

But it is only to one portion of the British Islands that the swift operation of the Happy Despatch has been applied. The broadlands of England and Scotland are, for the most part handsomely incumbered with mortgages, charges, and incumbrances of all sorts; quite forestalling the possibility of fastening on any of these light debenture sheets. To have an assured value

these latter must be first-comers, so as, in matters of interest payment, to be first served. Any amount, therefore, of such indentures fluttering about the country, unless in the priority of this valued and enviable position, would be of poor estimation. Still, something might be done in the way of a diluted principle. The old incumbered hulls might be taken into dock to be scraped clean of all mortgage molluscs and crustacea adherent, and this bright new vellum sheathing substituted. Or, if this is impossible, there are surely plenty newly launched barks in port, not by any means foul, and who have never been out upon the great Atlantic of incumbrances. To such favoured craft what is to hinder this new sheathing being applied. But, after all, a *mere partial* operation of such a system would only depreciate the value; and a want of precise uniformity in all the debentures would lead to doubt

and uncertainty, which again would lead to suspicion, and a fatal embodiment of that suspicion in a pecuniary shape. It is to be feared that no wholesale adoption of the principle can be thought of in England without either an Incumbered Estates Act by way of general purge, or else an universal conversion of the load of mortgages into debentures of corresponding value.

CHAPTER V.

SIR HUGH CAIRNS' LAND BILL.

THE success of this wonderful Irish experiment —proved by some ten years of stern and pitiless experience—seemed to point irresistibly to a trial on a grander scale. In Great Britain there were large tracts of incumbrances—vast prairies spreading away for centuries, and only waiting the axe of the clearer. The subject had been in a manner nibbled at by a Royal Commission; but without much profit, according to the inscrutable providence of such inquiries. But on the eleventh of February, eighteen hundred and fifty nine, Sir

Hugh Cairns, the Solicitor General, introduced his Land Transfer Bill, the details of which though tolerably fully discussed at the time, may not be at this moment present to the reader's mind He proposed then to import the scaffolding and skeleton, as it were, of the Irish Landed Estates Court, and set it up in London, with more important alterations in the details. The working was to be somewhat in this wise. Any proprietor might come forward and seek a "certificate of Title" from the Court, who thereupon advertized the application largely, and sent round notices to all parties concerned, and specially to the proprietors of adjoining estates and parcels of ground. After due and careful investigation, there was to follow what was called a "Provisional Declaration of Title," which remains in this sort of doubtful position for the space of one year, to give time to objectors, and innocent parties who might be

interested. Then, after three months' more probation, it was declared sound and absolute, and became an impenetrable title.

Still it was felt that no system of swift or convenient transfer of land could be attempted, without some plan of registry. If the old groping and burrowing among deeds and muniments; together with the attendant plagues of attested copies, covenants to produce, indemnities, conditions of sale, requisitions on title, suits for specific performances, and the other Robin Goodfellows of the Law, who disturb the peace of such hapless Bottom the Weavers as would buy or sell—if these sacred incidents are to be preserved, they would utterly clog and hamper the working of the new machinery.

Of Registry arrangements it has been shown, England is almost destitute; whereas for over a century and a half Ireland has been in the enjoy-

ment of a registry system, anything but perfect, but still satisfactory on the whole.

What the Solicitor-General proposed was ingenious. It was a sort of book-keeping applied to registries, an aiming at unity in all the many transactions that would affect the one estate. Thus the first entry would state, say the Title of the new purchaser, and the next set out the first incumbrance. Later on would come a second charge or incumbrance, and in this last entry would be "posted up" the two previous entries; so that there would be exhibited at a glance what "balance" was available for future charges; for trusts and equitable titles, there was no provision beyond a system of "caveats." How necessary some such registration must be, will be evident when it is stated that there are no less than three hundred thousand deeds relating to land, executed annually in England.

Grave objections were made to this proposal, and Lord St. Leonards protested vehemently against its adoption, and dwelt particularly on the danger of advertising to all the world that you were about taking your title into dock, as it were, to be overhauled and refitted, to be examined by Chancery surveyors; and worse than all, have leaks searched for carefully. Most perilous was this notifying to all the world that the inspection was about to take place, with a request that they would lend their aid in searching out defects. "This," said the noble law lord, "would only rouse the sleeping lions who lurk round every man's estate."

But the solicitor world was in a storm, and the barristerial thrones and dominations, and the whole legal choirs trembled generally. On this influence perhaps, was the measure shipwrecked. A newspaper was actually brought into the world

to do battle with the monster. The solicitor element subscribed monies. The cruel stroke was the centralization of the whole registration at the metropolis. What was to become of the "searches," lovely always in professional eyes; the draughting; the engrossing? To what contemptible figure would the three hundred thousand deeds—the average yearly growth—shrink to? It was clear it would not do. And so it was shipwrecked, and passed into the limbo of foundered bills.

CHAPTER VI.

LORD WESTBURY'S LAND BILL.

THE details of the Lord Chancellor's new land scheme are so fresh in the mind of the public, that it will be scarcely necessary to do more than point out where it differs from Sir Hugh Cairns' scheme. Lord Westbury proposes the same "careening" and refitting of a title by an examination and subsequent authoritative declaration; but he requires that this shall be done *not* before a separate court, as suggested by Sir Hugh Cairns' plan, but before a deputy of the Court of Chancery. Thus shall be avoided a conflict of

jurisdiction. This chancery registrar shall sift and winnow the titles, and pronounce them sound or unsound as the case may be. Yet here at the very outset, a grave objection will suggest itself, as to the *competence* of such an officer. It should be recollected that Sir John Romilly, the Master of the Rolls in England, has over and over declared, that the success of the Irish measure was mainly owing to the *personal* care and skill with which the eminent judges who presided, themselves fulfilled the duties of conveyancers. From such an officer as a Registrar, there would of course be an appeal, and the result would be an appeal in almost every instance, and a confirmed chancery suit.

He too proposes to deal with the grand question of Registration; not in one great ledger, but expanded over three. One should be "in account," with titles; that is to say, the purchasing owner's;

a second "in account," with mortgages; a third, "in account," with trust. Thus, should Mr. Styles be on the eve of purchasing an estate, he would consult volume the first to find the legitimate owner; volume the second to see if the legitimate owner had been raising monies on his lands; and volume the third to discover what sums he had charged upon them for his wife, younger children, &c. In this Bill too, as in the other, there is to be a sort of conditional guarantee for the title, before the irrevocable declaration which is to be good against all the world. Still the old objection, refuted a hundred times over by the experience of the Irish tribunal, is being already clamorously urged. What if a contiguous piece of ground be by mistake conveyed, what remedy has the injured party against the infallible conveyance? It has been shown that in a space of some ten years but two or three such instances

have occurred—and these but of such trifling moment as to be scarcely worth mentioning. Besides there is to be a compensation fund, as provision against such accidents.

THE END.

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